



**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED

NOV 29 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
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| In the Matter of |) | |
| |) | |
| Request for Review by Consorcio de Escuelas |) | |
| y Bibliotecas de Puerto Rico of Decision of |) | |
| Universal Service Administrator |) | |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Changes to the Board of Directors of the |) | CC Docket No. 97-21 |
| National Exchange Carrier Association, Inc. |) | |
| |) | |
| |) | |
| Academia Adventista Del Oeste |) | Application No. 228216 |
| |) | FRN No. 526329 |
| |) | FRN No. 660253 |
| |) | FRN No. 660276 |
| |) | FRN No. 660294 |
| |) | FRN No. 660315 |
| |) | FRN No. 660325 |
| To: Common Carrier Bureau | | |

REQUEST FOR REVIEW

Ines O'Neill
Executive Director, CEBPR
Contact Representative for the Applicant

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November 29, 2001

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| |) | FRN No. 660325 |
| To: Common Carrier Bureau | | |

Request for Review and Waiver

Pursuant to Sections 54.719(c) and 54.721 of the Commission's Rules, 47 C.F.R. §§ 54.719(c) and 54.721, the above-referenced applicant ("Applicant") and the Consorcio de Escuelas y Bibliotecas de Puerto Rico ("CEBPR") hereby request review of the attached decision (Exhibit 1) of the School and Libraries Division ("SLD") of the Universal Service Administrative Company denying the above-referenced application for Year 4 funding for reason of a "Bidding Violation" (FRN Nos. 660253, 660276, 660294, 660315 and 660325) and the failure to provide sufficient information with respect to one FRN (526329).

I. INTRODUCTION AND STATEMENT OF FACTS.

Applicant is a member of CEBPR, a consortium of schools and libraries in Puerto Rico, who filed the above-referenced Form 471 application with SLD on its behalf. According to the Funding Commitment Decision Letter, FRN 660253, 660276, 660294, 660315 and 660325 were denied for reason of a "Bidding violation . . . Associated Form 470 contains service provider contact information. Competitive violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder." No further explanation or reason for the denials is set forth in the denial letter.

The FCC Form 470 which CEBPR filed on behalf of the Applicant is attached as Exhibit 2. As shown therein, the Form 470 was executed by CEBPR's Executive Director, Ms. Ines O'Neill. In Block 6, both Ms. O'Neill and Dr. Moises Velasquez, the President of CEBPR, were listed as the Contact Persons at the following address:

The Atrium Office Center
530 Ponce De Leon Avenue
San Juan, PR 00901-2314
Tel: (787) 289-7862
Fax: (787) 289-8779
E-mail: cebpr@hitn.net

The service provider specified in the Form 471 application for these FRNs is Hispanic Information and Telecommunications Network, Inc. ("HITN") who has been CEBPR's existing service provider for several years. Neither Ms. O'Neill nor Dr. Velasquez has any employment or other business relationship with HITN. The address and telephone number listed above are for CEBPR's office in San Juan.

On behalf of its member institutions, CEBPR has contracted with HITN for Internet access and related internal connection equipment for a five-year period through January 29,

2003. CEBPR's multi-year Master Services Agreement with HITN, for which Form 470s have been filed in previous program years, is a "qualified contract" that did not require the filing of a Form 470 for program year 4.¹ Nonetheless, it has been CEBPR's practice to subject the contract to the FCC Form 470 process each year. Under the Master Services Agreement, if a lower cost competitive bid is received, CEBPR has the right to accept this bid and terminate the agreement with HITN, subject to HITN's right to match the lower bid.² The telecommunications services from Puerto Rico Telephone Company ("PRTC") for which funding was requested in FRN 526329 are tariffed monthly services that must be subjected to an annual Form 470 posting.³

Information which might be construed to represent a reference to HITN appears in only two places on CEBPR's FCC Form 470. First, in Box 4d and 6e, CEBPR's e-mail address is reported to be "cebpr@hitn.net." This reference to the abbreviated name of CEBPR's existing service provider is necessary as this is, in fact, CEBPR's e-mail address. Under its Master Service Agreement with HITN, e-mail service is provided by HITN to CEBPR. Certainly, this is not indicative of service provider involvement in the competitive bidding process.

Second, in response to Question 11, an optional question which did not even require a response asking for the name of a "person on your staff or project who can provide additional

¹ See Federal-State Joint Board on Universal Service, DA 99-1773, *Order*, 15 FCC Rcd 6732 (1999); Request for Review of the Decision of the Universal Service Administrator by Cochrane-Fountain City School District, DA 00-1045, *Order*, 15 FCC Rcd 16628 (2000).

² The contract was signed January 29, 1998, and was subject to previous FCC Form 470s filed by CEBPR for all previous program years. In addition, CEBPR has filed FCC Form 470s each year for the benefit of new members joining the Consortium (who file Form 471 applications on an individual basis) to ensure that the contract is competitively bid for all members.

³ The telecommunication services requested from PRTC are basic telephone line services purchased on a monthly basis for which there is no contract documentation. The denial of this funding request (FRN 526329) for insufficient documentation is therefore arbitrary and should be remanded to the SLD for further processing.

technical details or answer specific questions from service providers about the services you are seeking”, CEBPR provided the following information:

Gloria Bermudez
Tel: (212) 966-5660
Fax: (212) 966-5725
E-mail: gloriab@hitn.org

Ms. Bermudez is an employee of HITN who has had extensive involvement in CEBPR’s project with HITN. The phone numbers listed are for her at HITN’s New York office. As the question on its face is not limited to a CEBPR staff person but requested the name of anyone working on the “project,” the reporting of Ms. Bermudez name was completely appropriate in this context and did not violate program rules. She was not the Contact Person for purposes of disseminating competitive bidding information. As an HITN employee, Ms. Bermudez has no role or responsibility for CEBPR’s contracting policies and is not in a position to exert control over the competitive bidding process for services purchased by CEBPR on behalf of its members.⁴

II. THE SLD MISAPPLIED THE COMMISSION’S POLICY SET FORTH IN THE MASTERMIND DECISION.

In *MasterMind Internet Services*, the Commission held that a violation of the competitive bidding requirements has occurred where the service provider proposed in the Form 471 application for funding has participated in the competitive bidding process as the Form 470 Contact Person for the applicant.⁵ As the Contact Person “exerts great influence over an applicant’s competitive bidding process by controlling the dissemination of information

⁴ The Declaration of CEBPR’s Executive Director attesting to these facts is attached as Exhibit 3.

⁵ Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., *Order*, 16 FCC Rcd 4028, 4033 ¶ 10 (2000) (“MasterMind”).

regarding the services requested . . .,” the Commission determined that this constitutes an improper surrender of control of the bidding process to a service provider. There was no violation of this policy by CEBPR. As demonstrated above, the Contact Persons listed in response to Question 6a of Form 470 are Ms. Ines O’Neill, CEBPR’s Executive Director, and Dr. Moises Velasquez, CEBPR’s President, neither of whom have any employment or other business relationship with HITN. CEBPR did not provide any Contact Information in response to Question 6a that would render the application in violation of the Commission’s competitive bidding requirements.

Nor do the two references on the Form 470 described above provide any basis to conclude that there has been impermissible service provider involvement in the competitive bidding process. CEBPR’s response to optional Question 11 in which the name of a an HITN employee (Gloria Bermudez) was reported was completely appropriate and is not suggestive of service provider involvement in the bidding process. In terms of an ability to control the flow of information or otherwise influence the competitive bidding process, the role of a person described in optional Question 11 is not equivalent to the Contact Person for the applicant. Rather, the question asks the applicant to “name the person on your staff *or project* who can provide additional *technical details* or answer specific questions from service providers about the services you are seeking.”⁶ It is not limited to representatives of the applicant but on its face asks for the name of anyone working on the “project” with knowledge of the project’s “technical details.” Particularly as HITN was CEBPR’s existing service provider at the time, it was perfectly understandable for CEBPR to respond to the optional question with the name of an HITN employee who has been working on the project, who was familiar its technical details, and who was able to *answer questions* concerning those technical details.

The other reference to HITN in CEBPR's e-mail addresses is equally innocuous. As CEBPR's existing service provider, the fact that CEBPR and some of its member schools and libraries receive their e-mail service through HITN should not be surprising. Certainly, it is not evidence of impermissible service provider involvement in the competitive bidding process.

The SLD cannot apply the *MasterMind* case in a vacuum to find a "Bidding Violation" whenever the name or other potentially identifiable reference to an applicant's existing service provider is reflected on a Form 470. Indeed, in the context of an applicant seeking to rebid an existing service contract, it is logical to expect that the name or other reference to the existing service provider and/or the services it is currently providing will appear in some fashion on the Form 470. As the Commission recognized in *Mastermind*, even if the incumbent service provider were to go farther and actually secure a competitive advantage in the bidding process due to its incumbency, this would not constitute an improper exertion of "control over the bidding process to the disadvantage of other potential bidders."⁷ These circumstances require that the SLD apply the principles set forth in *MasterMind* with more care and precision than just looking on the Form 470 for the name of, or other identifiable reference to, the service provider selected by the applicant. In the case at hand, there is simply *no evidence* that CEBPR surrendered control of the bidding process to an employee of the incumbent service provider.

III. THE SERVICE PROVIDER CONDUCT REFLECTED ON THE FCC FORM 470 IS EXPRESSLY ALLOWED BY THE SLD's SERVICE PROVIDER MANUAL

The information provided by the Applicant on its Form 470 was expressly permissible under the SLD's own guidelines. The SLD's guidelines, "Service Provider Role in Assisting Customers" (Section 5 attached as Exhibit 4), provide that service providers can "offer technical

⁶ FCC Form 470, optional Question 11 (emphasis added).

⁷ *MasterMind*, 16 FCC Rcd at 4033 n.35.

assistance on the development of a Technology Plan as long as the assistance does not have an undue influence on the applicant's ability to conduct a fair and open competition for the necessary technology services and products."⁸ The Instruction to Question 11 for Form 470 makes clear that the optional information sought concerns the applicant's Technology Plan and technical details for the services sought:

Item (11) – As an option, provide the name and contact information of a person on your staff or project who can provide additional technical details and other information about your services to vendors seeking to bid. This need not be the same person listed as the contact person in Item (6) for the entire application, nor the authorized signer in Item (25).

Since a service provider is allowed to provide assistance on the development of a technology plan, it is logical that the service provider is also allowed to provide information on the technical details of such plan. HITN, as CEBPR's existing service provider, is very knowledgeable about CEBPR's technical requirements and, thus, is in a position to provide accurate information regarding the same. It is for this reason that CEBPR opted to use Ms. Bermudez as a resource and report her name in response to optional Question 11. In this respect, the use of service provider personnel as a technical resource is expressly allowed by the SLD's Service Provider Guidelines, which state that "the chosen service provider is expected to be a *resource* to the applicant for information about the technology, the products and the services that are being furnished to the applicant."⁹ Therefore, it was not inappropriate, or a violation of program rules, to report in this limited context the name of an incumbent service provider's employee.

⁸ See attached Exhibit 4, page 2-3, the SLD's guide to Service Provider participation in the E-rate, Section 5, Service Provider Role in Assisting Customers, www.sluniversalservice.org. ("SLD Service Provider Guidelines").

⁹ *Id.*

IV. APPLICANT SHOULD HAVE BEEN GIVEN AN OPPORTUNITY TO REBUT SLD'S DETERMINATION THAT APPLICANT'S FORM 470 CONTAINED ALLEGEDLY INAPPROPRIATE SERVICE PROVIDER INFORMATION.

The SLD further erred by failing to accord CEBPR an opportunity to rebut the SLD's conclusion that there was a violation of the competitive bidding requirements. Under FCC policy, where information in the application is perceived to raise a question the applicant has not had the opportunity to address, the applicant must be given notice of the issue and an opportunity to respond.¹⁰ Here, no such opportunity was accorded CEBPR. Instead, SLD simply proceeded to deny the funding request. Moreover, this precipitous action also violated the SLD's own Service Provider Guidelines, providing that the presence of service provider Contact Person information on the Form 470 only creates a "rebuttable presumption that the Service Provider is participating in the competitive bidding process. . .," which presumption may be rebutted by the applicant through the submission of information showing otherwise.¹¹

¹⁰ See Request for Review of the Decision of the Universal Service Administrator by Richard Parish School District, DA 01-2018, *Order*, ¶ 7,8 (rel. Aug. 28, 2001)(remand required where SLD did not give the applicant " notice of the issue or an opportunity to address it"); and Request for Review of the Decision of the Universal Service Administrator by Wetzel County School District, DA 01-1121, *Order*, ¶ 6 (rel. May 2, 2001) (SLD's decision to construe a multi-year telecommunications contact request as a monthly tariff request requiring a new Form 470 posting without giving the applicant notice and an opportunity to support its claim was an error warranting the remand of the applications to the SLD for further consideration).

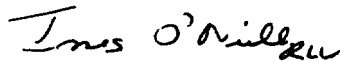
¹¹ Exhibit 4, Page 4.

V. CONCLUSION.

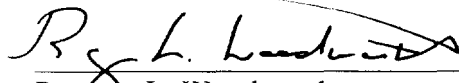
For the reasons stated above, the SLD's rejection of the above-referenced application should be reversed and the SLD directed to reinstate the application.

Respectfully submitted,

CONSORICO DE ESCUELAS Y
BIBLIOTECAS DE PUERTO RICO



Ines O'Neill
Executive Director, CEBPR
and Contact Representative
for the Applicant



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Counsel for CEBPR

November 29, 2001

EXHIBIT 1
SLD/USAC DENIAL OF APPLICATION



Universal Service Administrative Company
Schools & Libraries Division

FUNDING COMMITMENT DECISION LETTER

(Funding Year 4: 07/01/2001 - 06/30/2002)

October 31, 2001

ACADEMIA ADVENTISTA DEL OESTE

Ines O'Neill

530 Ponce de Leon Avenue, The Atrium Office Center
San Juan, PR 00901-2304

Re: Form 471 Application Number: 226216
Funding Year 4: 07/01/2001 - 06/30/2002
Billed Entity Number: 157716

Thank you for your 2001-2002 E-rate application and for any assistance you provided throughout our review. We have completed review of your Form 471. This letter is to advise you of our decision(s).

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. We have reviewed each Discount Funding Request on your Form 471 application and have assigned a Funding Request Number (FRN) to each Block 5. The enclosed report includes a list of the FRNs from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) upon the filing of your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

NEXT STEPS

Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step to facilitate receipt of discounts as featured in this letter will be to file an FCC Form 486 with the SLD. The Form 486 notifies the SLD to begin payment to your service provider and provides certified indication that your technology plan(s) has been approved. The Form 486 and instructions can be found on the SLD web site at <www.sl.universalservice.org> or you can call the SLD Client Service Bureau at 1-888-203-8100 and ask that the form be sent to you. The new Form 486, dated July 2001 in the lower right corner, MUST be used for Funding Year 4 and for any previous funding years. Subsequent submissions of earlier versions of the Form 486 will be returned to you and will not be able to be processed. As you complete Form 486, you should also contact your service provider to verify they have received notice from the SLD of your funding commitments. After the SLD processes your Form 486, we can begin processing invoices from your service provider(s) so they can be reimbursed for discounted services they have provided you.

On December 21, 2000, the Children's Internet Protection Act was signed into law. That law will require schools and libraries that receive Universal Service discounts for certain services to adopt an Internet safety policy incorporating the use of filtering or blocking technology on computers with Internet access as a condition of receiving those discounts. THE LAW DOES NOT, HOWEVER, REQUIRE THIS TO BE IN PLACE FOR FUNDING YEAR 4. RECIPIENTS WILL HAVE TO CERTIFY, HOWEVER, THAT THEY ARE UNDERTAKING SUCH ACTIONS, INCLUDING NECESSARY PROCUREMENT PROCEDURES, TO PUT SUCH TECHNOLOGY PROTECTION MEASURES IN PLACE. For Funding Year 4 (the Funding Year beginning July 1, 2001), Billed Entities filing Form(s) 486 may encounter one or more situations that will affect their filing deadline(s). See the requirements for Funding Year 4 below and the Form 486

Instructions for more information on filing deadlines to ensure that your discounts can be paid retroactively to the Service Start Date. You are advised to keep proof of the date of mailing.

1. If Funding Year 4 services start on or before Sunday, October 28, 2001, and the date of your Funding Commitment Decision Letter is before Sunday, October 28, 2001, your Form 486 must be postmarked on or before October 28, 2001 in order for discounts to be paid retroactively to the Service Start Date. Failure to meet this certification deadline will result in reduced funding.
2. If your services start after October 28, 2001, your Form 486 must be postmarked no later than 120 days after the Service Start Date or 120 days after the date of the Funding Commitment Decision Letter, whichever is later, in order for discounts to be paid retroactively to the Service Start Date. Failure to meet this filing deadline will result in reduced funding.

You may also check the SLD web site at <www.sl.universalservice.org> or call the Client Service Bureau at 1-888-203-8100 for more information about how this new law might impact universal service discounts and any needed documentation for Funding Year 4 (July 1, 2001-June 30, 2002).

TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) (FCD) indicated in this letter, your appeal must be made in writing and RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) at the SLD address below WITHIN 30 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which FCD Letter you are appealing. Indicate the relevant funding year and the date of the Funding Commitment Decision Letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your FCD Letter.
3. Identify the particular Funding Request Number (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Funding Commitment Decision Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an original authorized signature on your letter of appeal.

Please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Appeals submitted by fax, phone call, and e-mail CANNOT be processed.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC): FCC Office of the Secretary, 445-12th Street SW, Room TW-A325, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Services, the zip code you should use for this same address is 20024. If you are hand-delivering the appeal, check the SLD web site for more information. You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be made in writing and RECEIVED BY THE FCC at the FCC address above WITHIN 30 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information regarding filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference area of the SLD web site <www.sl.universalservice.org>.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Federal Communications Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued due to action or inaction, including but not

limited to that by SLD, the Applicant, or Service Provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

We look forward to continuing our work with you on connecting our schools and libraries through advanced telecommunications services.

Sincerely,

Schools and Libraries Division
Universal Service Administrative Company

Enclosures

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each E-rate funding request from your application. We are providing the following definitions.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each Block 5 of your Form 471 once an application has been processed. This number is used to report to Applicants and Service Providers the status of individual discount funding requests submitted on a Form 471.

FUNDING STATUS: Each FRN will have one of three definitions: "Funded," "Not Funded," or "As Yet Unfunded."

1. An FRN that is "Funded" will be approved at the level that SLD determined is appropriate for that item. The funding level will generally be the level requested unless the SLD determines during the application review process that some adjustment is appropriate.
2. An FRN that is "Not Funded" is one for which no funds will be committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision," and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation." An FRN may be "Not Funded" because the request does not comply with program rules, or because the total amount of funds in the Universal Service Fund was insufficient to fund all requests.
3. An FRN that is "As Yet Unfunded" reflects a temporary status that is assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for requests for internal connections at a particular discount level. For example, if your application included requests for discounts on both telecommunications services and internal connections, you might receive a letter with our funding commitment for your telecommunications funding requests and a message that your internal connections requests are "As Yet Unfunded." You would receive a subsequent letter(s) regarding the funding decision on your internal connections requests.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on Form 471.

EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT: The first possible date of service for which the SLD will reimburse service providers for the discounts for the service.

CONTRACT EXPIRATION DATE: The date the contract expires. This will be present only if a contract expiration date was provided on Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a will be listed. This will appear only for "site specific" FRNs.

PRE-DISCOUNT AMOUNT: Amount in Form 471, Block 5, Item 23, Column I, as determined through the application review process.

DISCOUNT PERCENTAGE APPROVED BY THE SLD: This is the discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD has reserved to reimburse service providers for the approved discounts for this service through June 30, 2002. It is important that you and the service provider both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts only for eligible, approved services actually rendered.

FUNDING COMMITMENT DECISION EXPLANATION: This entry may amplify the comments in the
"Funding Commitment Decision" area.

FUNDING COMMITMENT REPORT

Form 471 Application Number: 228216
Funding Request Number: 526329 Funding Status: Not Funded
Services Ordered: Telecommunications Service
SPIN: 143012431 Service Provider Name: Puerto Rico Telephone Company
Contract Number: T
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Site Identifier: 157716
Pre-Discount Amount: \$6,480.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Insufficient documentation
Funding Commitment Decision Explanation: Applicant has not provided sufficient documentation to determine the eligibility of this item.

Funding Request Number: 660253 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143006644 Service Provider Name: Hispanic Information & Teleco
Contract Number: N/A
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Site Identifier: 157716
Pre-Discount Amount: \$13,850.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 660276 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143006644 Service Provider Name: Hispanic Information & Teleco
Contract Number: N/A
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Site Identifier: 157716
Pre-Discount Amount: \$29,950.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 660294 Funding Status: Not Funded
Services Ordered: Internet Access
SPIN: 143006644 Service Provider Name: Hispanic Information & Teleco
Contract Number: N/A
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Site Identifier: 157716
Pre-Discount Amount: \$49,200.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

FUNDING COMMITMENT REPORT

Form 471 Application Number: 228216
Funding Request Number: 660315 Funding Status: Not Funded
Services Ordered: Internet Access
SPIN: 143006644 Service Provider Name: Hispanic Information & Teleco
Contract Number: N/A
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Site Identifier: 157716
Pre-Discount Amount: \$13,050.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service
provider contact information. Competitive bidding violation occurs when SP
associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 660325 Funding Status: Not Funded
Services Ordered: Telecommunications Service
SPIN: 143006644 Service Provider Name: Hispanic Information & Teleco
Contract Number: N/A
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Site Identifier: 157716
Pre-Discount Amount: \$11,400.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service
provider contact information. Competitive bidding violation occurs when SP
associated with Form 470 participates in competitive bidding process as a bidder.

EXHIBIT 2
FCC FORM 470

FCC Form

Approval by OMB
3060-0806**470**

Schools and Libraries Universal Service Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 5.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before completing.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

(School, library, or consortium desiring Universal Service funding.)

Form 470 Application Number: 640750000310896

Applicant's Form Identifier: CEBPR-1

Application Status: CERTIFIED

Posting Date: 11/17/2000

Allowable Contract Date: 12/15/2000

Certification Received Date: 11/27/2000

1. Name of Applicant:

PUERTO RICO CONSORTIUM OF SCHOOLS, LIBRARIES AND HEALTH

2. Funding Year:

07/01/2001 - 06/30/2002

3. Your Entity Number

157691

4. Applicant's Street Address, P.O.Box, or Route Number**a. Street**

The Atrium Office Center 530 Ponce de Leon Avenue

City

San Juan

State

PR

Zip Code 5Digit

00901

Zip Code 4Digit

2304

b. Telephone number

ext.

(787) 501- 5663

c. Fax number

(787) 289- 8779

d. E-mail Address

cebpr@hitn.net

5. Type Of Applicant (Check only one box)

☐ Library (including library system, library branch, or library consortium applying as a library)

☐ Individual School (individual public or non-public school)

☐ School District (LEA; public or non-public [e.g., diocesan] local district representing multiple schools)

☒ Consortium (intermediate service agencies, states, state networks, special consortia)

6a. Contact Person's Name: Moises Velasquez/Ines M. O'Neill

| | | | |
|---|-------|-----------------|-----------------|
| 6b. Street Address, P.O.Box, or Route Number (if different from Item 4) | | | |
| The Atrium Office Center 530 Ponce de Leon Avenue | | | |
| City | State | Zip Code 5Digit | Zip Code 4Digit |
| San Juan | PR | 00901 | 2304 |
| 6c. Telephone Number (10 digits + ext.) (787) 501- 5663 | | | |
| 6d. Fax Number (10 digits) (787) 289- 8779 | | | |
| 6e. E-mail Address (50 characters max.) cebpr@hitn.net | | | |

Block 2: Summary Description of Needs or Services Requested

| |
|---|
| 7 This Form 470 describes (check all that apply): |
| a. <input checked="" type="checkbox"/> Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year. |
| b. <input checked="" type="checkbox"/> Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year. |
| c. <input checked="" type="checkbox"/> Services for which a new written contract is sought for the funding year in Item 2. |
| d. <input type="checkbox"/> A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year. |
| NOTE: Services that are covered by a qualified contract for all or part of the funding year in Item 2 do NOT require filing of Form 470. A qualified contract is a signed, written contract executed pursuant to posting a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract. |

| |
|---|
| 8 <input checked="" type="checkbox"/> Telecommunications Services |
| Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? |
| a. <input type="checkbox"/> YES, I have an RFP. Choose one of the following: It is available on the Web at _____ or via <input type="checkbox"/> the Contact Person in Item 6 or <input type="checkbox"/> the contact listed in Item 11. |
| b. <input checked="" type="checkbox"/> NO, I do not have an RFP for these services. |
| If you answered NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services, and remember that only common carrier telecommunications companies can provide these services under the universal service support mechanism. Add additional lines if needed. |

| Service or Function: | Quantity and/or Capacity: |
|--|-----------------------------------|
| Satellite Service | All Schools and Libraries Members |
| PCS Service | All Schools and Libraries Members |
| High Capacity Service | All Schools and Libraries Members |
| Interactive TV | All Schools and Libraries Members |
| Cellular Service | All Schools and Libraries Members |
| Distance Learning | All Schools and Libraries Members |
| Homework Hotline Service | All Schools and Libraries Members |
| Local and Long Distance Service & Charge | All Schools and Libraries Members |
| CENTREX | All Schools and Libraries Members |

| | |
|--------------------------|-----------------------------------|
| LAN Interconnect Service | All Schools and Libraries Members |
| Local Loop | All Schools and Libraries Members |
| Media Converter | All Schools and Libraries Members |
| Satellite Dishes | All Schools and Libraries Members |
| Video Services | All Schools and Libraries Members |

9 ☒ Internet Access

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a ☐ YES, I have an RFP. Choose one of the following: It is available on the Web at
or via ☐ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

b ☒ NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access Services. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|----------------------------------|-----------------------------------|
| Satellite Service to Internet | All Schools and Libraries Members |
| E-Mail | All Schools and Libraries Members |
| Bundle Access | All Schools and Libraries Members |
| Domain Name Registration | All Schools and Libraries Members |
| System Improvements and Upgrades | All Schools and Libraries Members |

10 ☒ Internal Connections

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a ☐ YES, I have an RFP. Choose one of the following: It is available on the Web at
or via ☐ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

b ☒ NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., local area network) and quantity and/or capacity (e.g., connecting 10 rooms and 300 computers at 56Kbps or better). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections Services. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|-----------------------------------|-----------------------------------|
| CAT. 5 Wiring or Wireless Servers | All Schools and Libraries Members |
| Hubs and other Network equipment | All Schools and Libraries Members |
| Back-up Power Supply | All Schools and Libraries Members |
| Battery Back-up | All Schools and Libraries Members |
| Battery Module | All Schools and Libraries Members |
| Cabinet Mounted Power Strips | All Schools and Libraries Members |
| Antenna | All Schools and Libraries Members |
| Line Sharing Device | All Schools and Libraries Members |
| Programming Charges | All Schools and Libraries Members |
| Satellite Dishes | All Schools and Libraries Members |
| Servers | All Schools and Libraries Members |
| Power Poles | All Schools and Libraries Members |
| UPS | All Schools and Libraries Members |

| | |
|---------------------------------|--|
| UPS Interface Extenders | All Schools and Libraries Members |
| Hard Drive Array Control | All Schools and Libraries Members |
| RAID | All Schools and Libraries Members |
| Console | All Schools and Libraries Members |
| PBX Centrex | All Schools and Libraries Members |
| Switches | All Schools and Libraries Members |

11 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name:

Gloria Bermudez

Title:

Coordinadora

Telephone number (10 digits + ext.)

(212) 966 - 5660

Fax number

(212) 966 - 5725

E-mail Address (50 characters max.)

gloriab@hitn.org

12. ☐ Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or give Web address where they are posted.

13. (Optional) Purchases in future years: If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely timeframes).

Instructional software technology planning and training. Additional work stations (Desktop or Laptop)

Block 3: Technology Assessment

14. ☐ **Basic telephone service only:** If your application is for basic local and long distance voice telephone service only, check this box and skip to Item 16.

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop communications software: Software required ☒ has been purchased; and/or ☒ is being sought.

b. Electrical systems: ☒ adequate electrical capacity is in place or has already been arranged; and/or ☒ upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers ☒ has been purchased; and/or ☒ is being sought.

d. Computer hardware maintenance: adequate arrangements ☒ have been made; and/or ☒ are being sought.

e. Staff development: ☒ all staff have had an appropriate level of training or additional training has already been scheduled; and/or ☒ training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Service:

Check the ONE choice that best describes this application and the eligible entities that will receive the services described in this application.

You must select a state if (b) or (c) is selected: **PR**

a. ☐ **Individual school or single-site library:** Check here, and enter the billed entity in Item 17.

b. ☐ **Statewide application (check all that apply):**

- ☐ All public schools/districts in the state:
☐ All non-public schools in the state:
☐ All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. ☐ If checked, complete Item 18.

c. ☒ **School district, library system, or consortium application to serve multiple eligible sites:**

| | |
|--|--|
| Number of eligible sites | 16 |
| <i>For these eligible sites, please provide the following</i> | |
| Area Codes (list each unique area code) | Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces |
| 787 | 259, 264, 265, 280, 284, 817, 822, 823, 830, 831 |
| If your application includes INELIGIBLE entities, check here. <input type="checkbox"/> If checked, complete Item 18. | |

17. Billed Entities

| Entity Name | Entity Number |
|-------------------------------------|---------------|
| ACADEMIA ADVENTISTA DEL OESTE | 157716 |
| ACADEMIA ADVENTISTA DEL SUR | 157717 |
| ACADEMIA ADVENTISTA DEL SUROESTE | 157718 |
| BELLA VISTA ADVENTIST ACADEMY | 157731 |
| COLEGIO PRESBITERIANO SAN SEBASTIAN | 158930 |
| ACADEMIA SANTA ROSA DE LIMA | 158956 |

| | |
|---|--------|
| Colegio San Antonio | 158969 |
| Academia Pentecostal Bethel | 158971 |
| ACADEMIA ALEXANDRA | 159117 |
| LICEO AGUADILLANO | 159196 |
| ACADEMIA ADVENTISTA DEL NORESTE | 197675 |
| ACADEMIA ADVENTISTA DEL CENTRO RAMON RIVERA PEREZ | 197681 |
| Colegio Bilingue: Light of the Children | 197683 |
| ACADEMIA ADVENTISTA DEL NORTE | 197735 |
| ACADEMIA ADVENTISTA DE FLORIDA | 197736 |
| COLEGIO SANTISIMA TRINIDAD | 197768 |

18. Ineligible Entities

| Ineligible Participating Entity | Entity Number | Area Code | Prefix |
|---------------------------------|---------------|-----------|--------|
|---------------------------------|---------------|-----------|--------|

Block 5: Certification

19. The applicant includes:(Check one or both)

- a. ☒ schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, 20 U.S.C. Secs. 8801(14) and (25), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
- b. ☐ libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to) elementary and secondary schools, colleges and universities.

20. All of the individual schools, libraries, and library consortia receiving services under this application are covered by:

- a. ☐ individual technology plans for using the services requested in the application
- b. ☒ higher-level technology plans for using the services requested in the application
- c. ☐ no technology plan needed; application requests basic local and long distance telephone service only.

21. Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):

- a. ☒ technology plan(s) has/have been approved by a state or other authorized body.
- b. ☐ technology plan(s) will be approved by a state or other authorized body.
- c. ☐ no technology plan needed; application requests basic local and long distance telephone service only. .

22. ☒ I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23. ☒ I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24. ☒ I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. Signature of authorized person: ☒

26. Date (mm/dd/yyyy): 11/17/2000

27. Printed name of authorized person: Ines O'Neill

28. Title or position of authorized person: Directora Ejecutiva

29. Telephone number of authorized person: (787) 501 - 5663 ext.

05/6W -5/61/3E1/60

05/6N V E R - ff! -5/61/3E1/60 05/6F V T 00 N L F

EXHIBIT 3
AFFIDAVIT OF INES M. O'NEILL

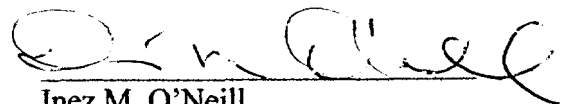
The Atrium Office Center
530 Ave. Ponce de León San Juan P.R. 00901
Tel: (787) 289- 7862
Fax: (787) 289-8779

DECLARATION OF INES M. O'NEILL

COMMONWEALTH OF PUERTO RICO)
MUNICIPALITY OF SAN JUAN)

Ines M. O'Neill, under penalty of perjury, hereby deposes and states as follows:

1. I am Executive Director of the Consorcio de Escuelas y Bibliotecas de Puerto Rico (CEBPR), a Consortium of Schools and Libraries in Puerto Rico. As Executive Director, I supervised the filing of all Form 470 and Form 471 applications for CEBPR members during the 2001-2002 Year 4 filing window.
2. I have read the attached **Request for Review** and declare that to the best of my knowledge and belief, all factual assertions are true and correct.



Inez M. O'Neill
Executive Director
Consorcio de Escuelas y
Bibliotecas de Puerto Rico, Inc.

EXHIBIT 4
THE SLD GUIDE TO SERVICE
PROVIDER PARTICIPATON IN THE
E-RATE , SECTION 5, SERVICE
PROVIDER ROLE IN ASSISTING
CUSTOMERS

5. Service Provider Role in Assisting Customers

Advise in a neutral way and foster open competition

The fundamental principle on which the E-rate Program is based is that the applicant has conducted a fair and open competitive procurement by which they decided upon the services they are ordering for E-rate discounts. In order to be sure that such a fair and open competition is achieved, it is imperative that Service Providers remember that their marketing discussions with applicants must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the Service Provider prior to the competitive bidding that would unfairly influence the outcome of a competition nor would furnish the Service Provider with “inside” information or allow them to unfairly compete in any way.

The applicant also must be in a position to accept bids once the Form 470 is posted on the SLD web site. The applicant must take an affirmative role in the evaluation of such bids. The FCC has ruled that the applicant may not delegate this evaluation role to anyone associated with a Service Provider.

Encourage compliance with Program rules

Service Providers can play an important role in reinforcing the importance of compliance with Program rules. If questions come up about either the applicant’s or Service Provider’s role in the competitive bidding process, they can be raised either in an email to serviceprovider@universalservice.org or with the Client Service Bureau at 1-888-203-8100.

Consequences for lack of compliance

In the event that SLD determines that the Service Provider has not acted in compliance with Program rules or the applicant has not acted in compliance with Program rules it can result in denial of funding, reduction in funding, cancellation of funding (a commitment adjustment), audit or other investigation. The Service Provider or applicant may also be subject to enforcement action. Again, check with the SLD if you in doubt about whether a specific action is acceptable.

Proper assistance in Form 470 process

Basic information about the Program and process

It is permissible for Service Providers, acting in a neutral, advisory role, to provide basic information about the E-rate Program and the application process. Customers should be directed to the official source of information, the SLD web site (www.sl.universalservice.org). Service Providers should familiarize themselves with the web site, especially the

Reference Area listings and What's New, in order to be able discuss the E-rate Program with customers.

Deadlines; timelines

Service Providers can remind applicants about the appropriate deadlines and timelines for filing application forms. Remember that the Form 471 has a "filing window" period, usually running from sometime in November to sometime in the following January. Applications that are properly filed and received within the filing window are treated as having arrived at the same time. Depending on available funding, commitments are made first to the applications received within the filing window and then to applications received outside the window. For the majority of Funding Years, there has not been sufficient money to fund applications received outside the window.

It is important to remind applicants that their obligation to meet deadlines does not end with the Form 471 application. Once the applicant has received a Funding Commitment Decision Letter, the applicant must file their Form 486 to indicate that services have started. Service Providers should not invoice USAC without having confirmation (through a 486 Notification Letter) that the Form 486 has been filed.

Assist in Request for Proposal (RFP) development

The FCC understands that applicants sometimes need to seek assistance from service providers in developing RFPs. Such assistance is permissible even if the service provider plans to submit a bid in response to that RFP as long as the service provider's assistance is neutral. For example, RFPs may not be written in such a way that only the service provider who rendered the assistance could win the bid. Or, an applicant may not reveal information to the service provider assisting in the preparation of the bid that the applicant does not share with all prospective bidders. These are just two examples of assistance that would not be considered neutral. If you need further assistance in determining whether actions are permissible, send an email to serviceprovider@universalservice.org or call the Client Service Bureau at 1-888-203-8100.

Assist customers with technology plan requirement

Familiarize customers with Program requirements

Information about the Technology Plan requirements can be found in the Reference Area of the SLD web site. Service Providers should be familiar with that material and may review it with their customers.

Provide technical assistance

Service Providers may offer technical assistance on the development of a technology plan, so long as that assistance can be interpreted as neutral and in no way as having an undue influence on the applicant's ability to

conduct a fair and open competition for the necessary technology services and products.

Proper assistance in Form 471 process

It is important to remember that the applicant has to wait at least 28 days from the day their Form 470 is **posted** on SLD's web site before choosing their Service Provider or signing a contract. Once the applicant has chosen their Service Provider (vendor) or signed the contract, the applicant can proceed to file the Form 471.

Provide guidance on services and functionality

The chosen Service Provider is expected to be a resource to the applicant for information about the technology, the products and the services that are being furnished to the applicant. The Service Provider should provide information that the applicant can include with their application, as the supporting documentation which describes in detail the services being ordered.

This role may not end with the Funding Commitment Decision Letter. If the applicant decides to do a service substitution, the Service Provider can play a valuable role in detailing how the functionality of the original request is being met by the newly desired configuration.

Provide account information for customers on existing services

Service Providers should be sure that the applicant is clear about Billing Account Numbers (if applicable), contract numbers, ineligible components (if any), and other details of existing services. Service Providers should discuss with applicants what will happen to discounts being provided if the Funding Commitment Decision Letter on existing services is delayed beyond the beginning of the subsequent Funding Year for some reason.

Service Providers should also be sure that the applicant has all the current information about SPIN numbers and company names (especially in a era of rapid changes due to mergers and acquisitions).

Serve as contact for questions about services, technology

Both the applicant and Service Provider can be resources to Program Integrity Assurance (PIA) staff during application review, whether that occurs prior to the original funding commitment or at a later stage due to a change in circumstances.

Inappropriate Roles for Service Providers

Signature on Applicant Forms

No person associated with a Service Provider should ever sign the Form 470 or Form 471. There should never be a situation where a person is

authorized by an applicant to make decisions for the applicant and at the same time be associated in any capacity with the Service Provider who submits bids in response to the Form 470 and appears on the Form 471. If such a relationship is discovered it may lead to enforcement action and denial of funding.

Contact on 470

The FCC has ruled that if a representative or employee of a Service Provider serves as the contact person on a Form 470 such action will have the effect of compromising the competitive bidding process. It is unlikely that the applicant can have a fair and open competitive process if the bids are submitted to and the evaluation is carried out by a representative or employee of a Service Provider who participated in the bidding process.

It should be noted that the presence of a representative or employee of a Service Provider as the contact on the Form 470, or any contact information associated with a service provider on the Form 470, renders that Form 470 invalid, if the services sought on the Form 470 include the type of services which the Service Provider furnishes. For example, if a representative or employee of a Service Provider which furnishes Internal Connections serves as the contact on a Form 470 seeking telecommunications services and Internal Connections, that entire Form 470 is rendered invalid and cannot be cited to support any FRNs. That is because there is a rebuttable presumption that the Service Provider is participating in the competitive bidding process if the Form 470 seeks the type of services furnished by the Service Provider. The applicant can rebut the presumption by proving that, in fact, the Service Provider did not participate in the competitive bidding.

If, on the other hand, the Form 470 which listed as a contact a representative or employee of a Service Provider which furnishes Internal Connections sought only telecommunications services, that Form 470 would be considered valid (to the extent everything else about that Form 470 complied with Program rules).

Approve technology plan

Service Providers may not act as technology plan approvers. Please see the material in the Reference Area on the SLD web site concerning technology plans.

Make final determinations about eligibility

It is the role of SLD (with approval from the FCC) to make determinations as to product and service eligibility for E-rate discounts. If a customer asks questions about specific products or services, and you do not know the SLD position, it is appropriate for the Service Provider to seek a

determination on the eligibility of the item in question. Such determinations can be requested by submitting an email inquiry to: serviceprovider@universalservice.org.

Provide completed or duplicate RFPs

Service Providers should not be preparing Requests for Proposals (RFPs) for the applicants. The applicants are responsible for this part of the competitive bidding process. While Service Providers may contribute information to help applicants prepare the RFP, the Service Provider may not provide the completed product.

In order to be effective, an RFP must contain sufficient detail about location and quantity of products or services sought to give prospective bidders enough information to prepare a responsive bid. For this reason, duplicate RFPs, where all of the details are identical except for the name of the customer seeking bids, are not allowable. The use of such RFPs may be used as evidence that the applicant failed to have a fair and open competitive bidding process.

Provide funding for applicant's undiscounted portion

In order for the applicant to truthfully certify that it has *on hand* or *fully committed* the necessary resources (including money) to make effective use of the products and services on which it is seeking discounts, such resources must be clearly available in the applicant's budget *at the time the applicant files the Form 471*. This means that the Service Provider may not seek other resources (such as grants or foundations) to pay the undiscounted portion of the products or services, unless such funds are committed to the applicant prior the applicant filing the Form 471. Please see the Reference Area of the SLD web site, where you will find in the alphabetical listing an item titled Obligation to Pay Non-Discount Portion, which explains this requirement in detail.

Waive applicant's undiscounted portion

One of the prime considerations of the FCC in making the E-rate a discount program was that applicants would have to spend some of their own money on the products and services, thereby providing the applicants with an incentive to make the most appropriate and cost effective decisions about procuring products and services. For this reason, it is a violation of Program rules for the Service Provider to waive the applicant's undiscounted portion or otherwise not require payment. If SLD becomes aware of such a situation it can result in denial of funding, reduction of funding or cancellation of funding (commitment adjustment) and may also result in the Service Provider being subjected to enforcement action.

Coercion or pressure to use a specific Service Provider

The E-rate Program is built on a foundation of state and local procurement laws. It is a violation generally of these laws for a Service Provider to exert undue influence on a customer in order to induce that customer to enter into a contract or otherwise purchase products or services from the Service Provider. If the SLD determines that a Service Provider has engaged in coercive practices (or if SLD receives a complaint from an applicant), an investigation may lead to enforcement actions and possible reduction or loss of funding.

Coercive actions include but are not limited to, contracts that presume a relationship with subcontractors or other Service Providers not chosen by the applicant, the inducement to contract with the Service Provider as a result of “free” assistance in completing application forms, the offer of free or greatly reduced equipment as an inducement to sign a contract or purchase order, and contracts that contain penalty clauses.

Interfere with competitive bidding


Service Providers, through the actions of their representatives and employees, may not interfere with or obstruct the competitive bidding process. The applicant has an affirmative duty to conduct a fair and open competition, seeking the most cost effective solution to its technology needs. Price must be the most important factor in consideration (the factor with the greatest weight), but need not be the only consideration. Other factors may include the Service Provider’s experience, the ability of the Service Provider to meet time deadlines or geographical needs, the quality of the work, and the ability of the Service Provider to provide necessary maintenance and assistance.

CERTIFICATE OF SERVICE

I, Claudia Darbie, hereby certify that on November 29, 2001, I caused copies of the foregoing “**Request for Review**” to be delivered, by hand, to the following:

Universal Service Administrative Company*
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C867
Washington, DC 20554

A handwritten signature in cursive script that reads "Claudia Darbie". The signature is written in dark ink and is positioned above a horizontal line.

*Via U.S. Mail